

1 MELINDA HAAG (CABN 132612)
United States Attorney
2 ALEX G. TSE (CABN 152348)
Chief, Civil Division
3 MELANIE L. PROCTOR, (SBN 228971)
Assistant United States Attorney

4
5 450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-6730
6 FAX: (415) 436-7169
7 Melanie.Proctor@usdoj.gov

8 Attorneys for the United States of America

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JUN 10 2015

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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10 UNITED STATES DISTRICT COURT
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12 NORTHERN DISTRICT OF CALIFORNIA
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14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA, ex rel.)
MICHAEL O'CONNELL,)

16 Plaintiff,)

17 v.)

18 REGENTS OF THE UNIVERSITY OF)
CALIFORNIA,)

Defendant.)

) C 14-02880 HSG

) **UNITED STATES' NOTICE OF ELECTION TO**
19 **DECLINE INTERVENTION; [PROPOSED]**
20 **ORDER TO SHOW CAUSE**

21 **FILED UNDER SEAL**

1 Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States hereby notifies
2 the Court of its decision not to intervene in this qui tam action.

3 We respectfully refer the Court to *Vermont Agency of Natural Resources v. United States ex rel.*
4 *Stevens*, 529 U.S. 765 (2000), in which the United States Supreme Court held that the False Claims Act
5 does not subject states or state entities to liability in qui tam actions brought by relators in which the
6 United States has not intervened. The Ninth Circuit has previously determined that the Regents are a
7 state entity. *United States ex rel. Donald v. University of California Board of Regents*, 329 F.3d 1040,
8 1044 (9th Cir. 2003); *see also United States ex rel. Adrian v. Regents of the University of California*, 363
9 F.3d 398 (5th Cir. 2004) (holding that the Regents are a state entity when managing the Lawrence
10 Livermore National Laboratory); *Doe v. Lawrence Livermore National Laboratory*, 131 F.3d 836, 839
11 (9th Cir. 1997) (holding that the University of California is an arm of the State of California).
12 Accordingly, we suggest that the Court should issue an order to show cause why the case should not be
13 dismissed.

14 Dated: June 10, 2015
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16 Respectfully submitted,
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18 MELINDA HAAG
19 United States Attorney
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22 MELANIE L. PROCTOR
23 Assistant United States Attorney
24 Attorneys for the United States of America
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1 [PROPOSED] ORDER

2 The United States having declined to intervene in this action pursuant to the False Claims Act,
3 31 U.S.C. § 3730(b)(4)(B), the Court rules as follows:

4 1. All sealed contents of the Court's file in this action shall remain under seal and not be made
5 public or served upon the defendants, except for the Complaint, this Order, and the accompanying
6 United States' Notice of Election to Decline Intervention, which are hereby unsealed.

7 2. The relator shall have 60 days to show cause why this action should not be dismissed
8 pursuant to *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000).

9 IT IS SO ORDERED.

10
11 Dated: 6/11/2015


12 HAYWOOD S. GILLIAM, JR.
13 UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE
United States ex rel. Michael O'Connell v. Regents.
C 14-02880 HSG

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following document(s):

**UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION;
[PROPOSED] ORDER TO SHOW CAUSE**

to be served this date upon the party(ies) as follows:

FIRST CLASS MAIL by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

PERSONAL SERVICE (BY MESSENGER) I caused such envelope to be delivered by hand to the person or offices of each addressee below.

FACSIMILE (FAX) Telephone No.: _____ I caused each such document to be sent by facsimile to the person or offices of each addressee below.

FEDERAL EXPRESS

CERTIFIED MAIL

BY E-MAIL I caused each such document to be sent by e-mail to the person or offices of each addressee below.

to the party(ies) addressed as follows:

Michael J. O'Connell
Law Office of Michael J. O'Connell
100 Pine Street, Suite 1250
San Francisco, CA 94111

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 10, 2015 at San Francisco, California.


DARYA OBORINA